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8 WAYNE GORDON, No. C-08-3964 TEH (PR)  
9 Plaintiff,

10 v.  
11 GREGORY J. AHERN, SHERIFF, et. al., Defendants.

12 ORDER OF SERVICE AND  
13 INSTRUCTIONS TO THE CLERK  
14 /  
15 On August 19, 2008, Plaintiff, a prisoner housed at the  
16 Santa Rita Jail (Alameda County) in Dublin, California, filed a pro  
17 se Complaint under 42 U.S.C. § 1983 alleging that beginning on or  
18 around July 5, 2008, certain Santa Rita Jail officials committed  
19 various acts that violated his constitutional rights. Doc. # 1.  
20 Specifically, Plaintiff alleges certain Santa Rita Jail officials  
21 were deliberately indifferent to his serious medical needs by  
22 denying him the use of a wheelchair for which he had prior approval  
23 from jail medical officials. See Doc. # 1, Ex. E & M. Plaintiff  
24 further alleges that as a result of being deprived of his  
25 wheelchair, he experienced pain and sustained injuries that were  
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1 left untreated.

2 On September 5, 2008, Plaintiff filed a First Amended  
3 Complaint in which he alleges that on or around May 21, 2008,  
4 different Santa Rita Jail officials than those named in the original  
5 Complaint denied him access to legal materials in violation of his  
6 constitutional rights. Doc. # 4.

7 On October 20, 2008, Plaintiff filed a Second Amended  
8 Complaint (SAC) in which he alleges that different Santa Rita Jail  
9 officials than those named in either of the two previously filed  
10 Complaints committed acts that violated his constitutional rights.  
11 Doc. # 5. The allegations contained in the SAC include: (1) an  
12 incident in April 2008 where Plaintiff alleges he was shot in the  
13 eye with a rubber band by a Santa Rita jail official; (2) an  
14 incident in June 2008 where Plaintiff alleges his handcuffs were too  
15 tight and caused him pain; and (3) an incident in August 2008 where  
16 Plaintiff alleges he was denied access to his medical records.

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18 II

19 Persons may be joined in one action as defendants so long  
20 as: (1) the right to relief asserted against each defendant arises  
21 out of or relates to the same transaction or occurrence, or series  
22 of transactions or occurrences; and (2) a question of law or fact  
23 common to all defendants arises in the action. See Fed. R. Civ. P.  
24 20(a)(2).

25 Here, Plaintiff's original Complaint contains allegations  
26 of deliberate indifference to his serious medical needs pertaining  
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1 to a series of events beginning on or around July 5, 2008 when he  
2 was denied the use of his medically approved wheelchair.  
3 Plaintiff's First and Second Amended Complaints, however, are  
4 completely unrelated to these allegations and instead allege a  
5 series of separate constitutional violations committed by various  
6 individuals acting independently.

7 Under these circumstances, the Court will treat  
8 Plaintiff's original Complaint as the operative one, and DISMISS  
9 WITHOUT PREJUDICE Plaintiff's First and Second Amended Complaints  
10 subject to him refiling separate actions for each unrelated  
11 incident. Should Plaintiff choose to refile, he may only allege  
12 claims that (a) arise out of the same transaction, occurrence, or  
13 series of transactions or occurrences and (b) present questions of  
14 law or fact common to all defendants named therein. See Fed. R.  
15 Civ. P. 20(a)(2).

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17 III

18 Federal courts must engage in a preliminary screening of  
19 cases in which prisoners seek redress from a governmental entity or  
20 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
21 The court must identify cognizable claims or dismiss the complaint,  
22 or any portion of the complaint, if the complaint "is frivolous,  
23 malicious, or fails to state a claim upon which relief may be  
24 granted," or "seeks monetary relief from a defendant who is immune  
25 from such relief." Id. § 1915A(b). Pleadings filed by pro se  
litigants, however, must be liberally construed. Balistreri v.

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1 | Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must  
allege two essential elements: (1) that a right secured by the  
Constitution or laws of the United States was violated, and (2) that  
the alleged violation was committed by a person acting under the  
color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

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9                   Deliberate indifference to serious medical needs violates  
10 the Eighth Amendment's proscription against cruel and unusual  
11 punishment. Estelle v. Gamble, 429 US 97, 104 (1976). A "serious  
12 medical need" exists if the failure to treat a prisoner's condition  
13 could result in further significant injury or the "unnecessary and  
14 wanton infliction of pain." McGuckin v. Smith, 974 F.2d 1050, 1059  
15 (9th Cir. 1992) (citing Estelle, 429 U.S. at 104), overruled in part  
16 on other grounds by WMX Technologies, Inc. v Miller, 104 F.3d 1133,  
17 1136 (9th Cir. 1997) (en banc). A prison official is "deliberately  
18 indifferent" if he knows that a prisoner faces a substantial risk of  
19 serious harm and disregards that risk by failing to take reasonable  
20 steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

B

23 In his original Complaint filed on August 19, 2008,  
24 Plaintiff alleges that Santa Rita Jail officials were deliberately  
25 indifferent to his serious medical needs by denying him the use of a  
26 wheelchair for which he had prior approval from jail medical

1 officials. Plaintiff further alleges that because he did not have  
2 access to his wheelchair, he experienced pain and sustained injuries  
3 that went untreated. Liberally construed, these allegations appear  
4 to state a cognizable § 1983 claim for deliberate indifference to  
5 Plaintiff's serious medical needs, and Santa Rita Jail Physician's  
6 Assistant Vila, Medical Administrator D. Orr, and Deputy D. Kyes  
7 will be served.

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IV

10 For the foregoing reasons and for good cause shown:

11 1. Plaintiff's First and Second Amended Complaints are  
12 DISMISSED WITHOUT PREJUDICE subject to Plaintiff refiling each  
13 unrelated claim against unrelated defendants as a separate action.  
14 Plaintiff is advised that if he chooses to refile, he may only  
15 allege claims that (a) arise out of the same transaction,  
16 occurrence, or series of transactions or occurrences and (b) present  
17 questions of law or fact common to all defendants named therein.  
18 See Fed. R. Civ. P. 20(a)(2).

19 2. The Clerk shall issue summons and the United States  
20 Marshal shall serve, without prepayment of fees, copies of the  
21 original Complaint in this matter filed on August 19, 2008, all  
22 attachments thereto, and copies of this order on Santa Rita Jail  
23 Physician's Assistant Vila, Medical Administrator D. Orr, and Deputy  
24 D. Kyes. All other parties named as Defendants are DISMISSED. The  
25 Clerk also shall serve a copy of this Order on Plaintiff.

26 3. In order to expedite the resolution of this case, the  
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1 Court orders as follows:

2                   a. No later than 90 days from the date of this  
3 Order, Defendants shall file a Motion for Summary Judgment or other  
4 dispositive motion. A Motion for Summary Judgment shall be  
5 supported by adequate factual documentation and shall conform in all  
6 respects to Federal Rule of Civil Procedure 56, and shall include as  
7 exhibits all records and incident reports stemming from the events  
8 at issue. If Defendants are of the opinion that this case cannot be  
9 resolved by summary judgment or other dispositive motion, they shall  
10 so inform the Court prior to the date his motion is due. All papers  
11 filed with the court shall be served promptly on Plaintiff.

12                   b. Plaintiff's Opposition to the dispositive motion  
13 shall be filed with the court and served upon Defendants no later  
14 than 30 days after Defendants serve Plaintiff with the motion.

15                   c. Plaintiff is advised that a Motion for Summary  
16 Judgment under Rule 56 of the Federal Rules of Civil Procedure will,  
17 if granted, end your case. Rule 56 tells you what you must do in  
18 order to oppose a motion for summary judgment. Generally, summary  
19 judgment must be granted when there is no genuine issue of material  
20 fact - that is, if there is no real dispute about any fact that  
21 would affect the result of your case, the party who asked for  
22 summary judgment is entitled to judgment as a matter of law, which  
23 will end your case. When a party you are suing makes a motion for  
24 summary judgment that is properly supported by declarations (or  
25 other sworn testimony), you cannot simply rely on what your  
Complaint says. Instead, you must set out specific facts in

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1 declarations, depositions, answers to interrogatories, or  
2 authenticated documents, as provided in Rule 56(e), that contradict  
3 the facts shown in Defendants' declarations and documents and show  
4 that there is a genuine issue of material fact for trial. If you do  
5 not submit your own evidence in opposition, summary judgment, if  
6 appropriate, may be entered against you. If summary judgment is  
7 granted, your case will be dismissed and there will be no trial.  
8 Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App  
9 A).

10 Plaintiff also is advised that a Motion to Dismiss for  
11 failure to exhaust administrative remedies under 42 U.S.C. §  
12 1997e(a) will, if granted, end your case, albeit without prejudice.  
13 You must "develop a record" and present it in your opposition in  
14 order to dispute any "factual record" presented by the Defendant in  
15 his Motion to Dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14  
16 (9th Cir. 2003).

17 d. Defendants shall file a reply brief within 15  
18 days of the date on which Plaintiff serves them with the opposition.

19 e. The motion shall be deemed submitted as of the  
20 date the reply brief is due. No hearing will be held on the motion  
21 unless the Court so orders at a later date.

22 4. Discovery may be taken in accordance with the Federal  
23 Rules of Civil Procedure. No further court order is required before  
24 the parties may conduct discovery.

25 5. All communications by Plaintiff with the court must  
26 be served on Defendants, or Defendants' counsel once counsel has

1 been designated, by mailing a true copy of the document to  
2 Defendants or Defendants' counsel.

3         6. It is Plaintiff's responsibility to prosecute this  
4 case. Plaintiff must keep the Court and all parties informed of any  
5 change of address and must comply with the Court's orders in a  
6 timely fashion. Failure to do so may result in the dismissal of  
7 this action pursuant to Federal Rule of Civil Procedure 41(b).  
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9                          IT IS SO ORDERED.  
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11 DATED                  04/10/09

  
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12                          THELTON E. HENDERSON  
13                          United States District Judge  
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